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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/767,486
Filing Date: January 29, 2004
Appellant(s): BEKIARES ET AL.

Valerie M. Davis
Reg. No. 50,203
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 12, 2009 appealing from the Office action mailed June 10, 2008.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: An outstanding objection stands to claim 19 for interpretation of the term Middleware to be solely software as alluded to in Appellants Specification page 1, lines 9-12.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2002/0019879 Jasen et al.

2004/0196864 Benveniste

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jasen et al. (US 2002/0019879), herein referred to as Jasen, and further in view of Benveniste (US 2004/0196864).

As per claims 1,18,20, Jasen discloses a method for use by middleware in a communication

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system comprising the steps of:

enabling a group of behavior sets for use by middleware wherein the middleware provides an interface between at least one application running on a first device and at least one network transport element external to the first device (see paragraphs 18 and 22, where an NTM system is considered the middleware that provides client and server functionality that allows prioritization of web traffic wherein the behavior sets are considered the different priorities), and wherein each behavior set in the group provides for at least one of a different set of routing rules and a different Quality of Service for traffic sent between the at least one application and the at least one network transport element (see paragraph 26);

operating in accordance with a first behavior set from said group (see paragraph 22, where the first behavior set is considered normal network traffic);

receiving at least one trigger (see paragraph 24, where a trigger is considered applying a coupon);

selecting a second behavior set from said group based upon said at least one trigger (see paragraph 26); and

operating in accordance with said second behavior set (see paragraph 26).

Although the system disclosed by Jasen shows substantial features of the claimed invention (discussed above), it fails to disclose that the trigger indicates at least one of a condition of mission criticality or a level of mission criticality for a situation that is external to the middleware, external to data routed to and from the middleware and external to data associated with a user of the middleware.

Nonetheless, these features are well known in the art and would have been an obvious modification of the system disclosed by Jasen, as evidenced by Benveniste.

In an analogous art, Benveniste discloses receiving at least one trigger that indicates at least one of a condition of mission criticality or a level of mission criticality for a situation that is external to the middleware, external to data routed to and from the middleware, and external to data associated with a user of the middleware (see paragraphs 11 and 14, describing how a condition for a mission critical situation (i.e. a 911 call) is treated with a higher quality of service; further implying that the mission critical

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situation is external (e.g. a fire external to the middleware, external to data routed to and from the middleware, and external to data associated with a user that caused someone to dial 911)).

Given the teaching of Benveniste, a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Jasen by employing an external trigger situation, such as disclosed by Benveniste, in order to receive higher priority for emergency 911 calls.

As per claim 2, Jasen further discloses notifying a second middleware of the selecting of said behavior set, wherein the second middleware provides an interface between at least one application running on a second device and at least one network transport element external to the second device (see paragraph 24, where the second device is considered the NTM server).

As per claim 3, Benveniste further discloses the at least one trigger is at least one of:

a light bar activation;

a light bar deactivation;

a change in the time of day;

the speed of a vehicle;

location information;

an emergency bar activation;

an emergency bar deactivation;

an emergency button activation;

an emergency button deactivation;

a siren activation;

a siren deactivation;

a dispatch warning;

a change in dispatch status;

a change in incident status (see paragraph 14, where a 911 call is considered a change in incident status); and

a change in situational status.

As per claim 4, Jasen further discloses that the middleware is a middleware client (see

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paragraph 18).

As per claim 5, Jasen further discloses that the middleware is a middleware server (see paragraph 18).

As per claim 6, Jasen further discloses implementing a set of routing rules and Quality of Service determined as a function of said second behavior set (see paragraph 26).

As per claim 7, Jasen further discloses that the first behavior set is a default behavior set (paragraph 22).

As per claim 8, Jasen further discloses that the at least one trigger is at least one of a remote trigger and an external trigger (see paragraph 23).

As per claim 9, Jasen further discloses examining state information and wherein said second behavior set is selected based upon said state information (see paragraph 23).

As per claim 10, Jasen further discloses that the second behavior set is selected based upon a determination of a first condition (see paragraph 26).

As per claim 11, Benveniste further discloses that the first condition is the at least one of the condition of mission criticality or the level of mission criticality (see paragraph 14, where the condition is a 911 call).

As per claim 12, Jasen further discloses that determination of said first condition is made external to said middleware and communicated to said middleware via said at least one trigger (see paragraph 23).

As per claim 13, Jasen further discloses that determination of said first condition is made by a second middleware that provides an interface between at least one application running on a second device and at least one network transport element external to the second device (see paragraph 23).

As per claim 14, Jasen further discloses that determination of said first condition is made manually (see paragraph 47);

As per claim 15, Jasen further discloses that determination of said first condition is internal to said middleware based on said at least one trigger (see paragraph 47).

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As per claim 16, Jasen further discloses that at least one of the behavior sets in said group is predefined (see paragraph 26).

As per claim 17, Jasen further discloses that at least one of the behavior sets in said group is dynamically determined (see paragraph 26).

As per claim 19, Jasen in view of Benveniste further discloses Middleware for mediating between at least one application and at least one communication network transport, said middleware comprising:

an application interface to at least one application running on a device (see paragraph 49);

a network interface to at least one network transport element external to the first device (see paragraph 16);

a group of behavior sets, wherein each behavior sets, wherein each behavior set in the group provides for at least one of a different set of routing rules and a different Quality of Service for traffic sent between the at least one application and the at least one network transport element (see paragraph 26); and

a behavior set selection function operative for causing said middleware operate in accordance with a first behavior set from said group (see paragraph 26); receiving at least one trigger (see paragraph 23) that indicates at least one of a condition of mission criticality or a level of mission criticality for a situation that is external to the middleware, external to data routed to and from the middleware, and external to data associated with a user of the middleware (see Benveniste paragraphs 11 and 14, describing how a condition for a mission critical situation (i.e. a 911 call) is treated with a higher quality of service; further implying that the mission critical situation is external (e.g. a fire external to the middleware, external to data routed to and from the middleware, and external to data associated with a user that caused someone to dial 911)); selecting a second behavior set from said group based upon said at least one trigger (see paragraph 26); and causing said middleware to operate in accordance with said second behavior set (see paragraph 26).

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(10) Response to Argument

A) Appellant contends that Benveniste fails to disclose any type of middleware providing an interface between an application running on the device and a network transport element and fails to disclose a change in monitored condition or parameters (i.e. trigger(s)) that indicate an emergency response condition external to the device, external to data transmitted to and from the device, and external to data associated with the user.

In considering A), the middleware providing an application running on the device and a network transport element was taught by Jasen as seen in the grounds of rejection above “enabling a group of behavior sets for use by middleware wherein the middleware provides an interface between at least one application...” (see paragraphs 18 and 22) and receiving of the trigger is taught by Jasen as discussed above “receiving at least one trigger (see paragraph 24, where a trigger is considered applying a coupon to gain prioritized web traffic)”. Benveniste was used to show that the trigger indicated a condition of mission criticality. However, even if Jasen did not disclose a middleware, the middleware is still taught by Benveniste because a user device makes a 911 call that cause voice packets generated by the user device to get special treatment. That is, the application running on the device is the application generating the packets and the network transport element is considered the device allowing the packets to travel through the network. Furthermore, even if Jasen did not disclose receiving the trigger, Benveniste would still disclose receiving the trigger actuated by a 911 call (i.e. system monitors for 911 calls to begin the prioritization of the 911 frames) (see paragraph 14, “Once a 911 call has been set up...give 911 frames preferential treatment”). Therefore, the external trigger as claimed is met by the 911 call. That is, the 911 call acts as the trigger to give the 911 frames preferential treatment. If there was no 911 call to trigger the condition of mission criticality, the 911 frames would never get their preferential treatment, and the phone call would be treated like a normal call and not an emergency.

B) Appellant contends that Jasen in view of Benveniste do not teach the limitations of claim 8 in that at least one trigger is at least one of a remote trigger and an external trigger.

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In considering B), the Examiner respectfully disagrees. Although the application of a coupon occurs internal to the client device, Jasen teaches that the coupon is at least a remote trigger for the NTM which determines if the coupon applied is valid (see paragraph 23, *describing the NTM client receiving information about the coupon from a URL received from the client device with the coupon in the URL*, and paragraph 24, *describing the NTM server receiving data from the NTM client validating the coupon*).

C) Appellant contends that Jasen in view of Benveniste do not teach the limitations of claim 9 in examining state information, and wherein said second behavior set is selected based upon the state information.

In considering C), the Examiner respectfully disagrees. Examiner interprets examining the state information as examining the state of the coupon. Jasen teaches that the coupon from the URL received from the client device is analyzed to determine if the coupon is valid.

D) Appellant contends that Jasen in view of Benveniste do not teach the limitations of claim 12 in that determination of said first condition is made external to said middleware and communicated to said middleware via said at least one trigger.

In considering D), the Examiner respectfully disagrees. The first condition is made external to the middleware because the first condition is based on existing network conditions before the coupon was applied. That is, the NTM had determined that the client was supposed to receive normal traffic conditions or coupon traffic conditions prior to receiving current traffic conditions (see paragraphs 22 and 23). Furthermore, Appellants specification alludes that the middleware can be software or hardware (see Specification page 1, lines 9-12).

E) Appellant contends that Jasen in view of Benveniste do not teach limitation of claim 13 in that the determination of said first condition is made by a second middleware that provides an interface between at least one application running on a second device and at least one network transport element external to the second device.

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In considering E), the Examiner respectfully disagrees. Since Appellants Specification page 1, lines 9-12, allow the middleware to be software. The Examiner believes that the NTM software provides a client and server software that initiates the traffic conditions (i.e. a new coupon after a previous coupon expired). The NTM server is considered the second middleware that provides the interface between the at least one application running on a second device and at least one network transport element external to the second device (see paragraph 23, *describing the NTM client portion*, and then paragraph 24, *describing how the NTM server (second middleware) also validates the coupon*).

F) Appellant contends that Jasen in view of Benveniste do not teach the limitation of claim 14 in the determination of said first condition is made manually.

In considering F), the Examiner respectfully disagrees. The Examiner believes that paragraph 47 of Jasen allows a user to accept or reject installation of coupons. That is, during install and when the user is about to get the first condition of network traffic, the user can manually decide to get a coupon (i.e. for prioritized traffic) or not. The Examiner considers this to be manually determining if a first condition exists or what type of first condition exists.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Philip J Chea/

Examiner, Art Unit 2453

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Art Unit: 2453

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